

104TH CONGRESS  
1ST SESSION

# S. 550

To amend the National Labor Relations Act and the Railway Labor Act  
and to prevent discrimination based on participation in labor disputes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 6), 1995

Mr. EXON introduced the following bill; which was read twice and referred to  
the Committee on Labor and Human Resources

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## A BILL

To amend the National Labor Relations Act and the Railway  
Labor Act and to prevent discrimination based on par-  
ticipation in labor disputes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. PREVENTION OF DISCRIMINATION DURING**  
4                       **AND AT THE CONCLUSION OF LABOR DIS-**  
5                       **PUTES.**

6       Section 8 of the National Labor Relations Act (29  
7       U.S.C. 158) is amended—

8               (1) in subsection (a)—

9                       (A) by striking the period at the end of  
10               paragraph (5) and inserting “; or”; and

1 (B) by adding at the end thereof the fol-  
2 lowing new paragraph:

3 “(6) subject to subsection (h), to promise,  
4 threaten, or take other action—

5 “(A) to hire a permanent replacement for  
6 an employee who—

7 “(i) at the commencement of a labor  
8 dispute was an employee of the employer  
9 in a bargaining unit in which a labor orga-  
10 nization was the certified or recognized ex-  
11 clusive representative or, on the basis of  
12 written authorizations by a majority of the  
13 unit employees, was seeking to be so cer-  
14 tified or recognized; and

15 “(ii) in connection with that dispute  
16 has engaged in concerted activities for the  
17 purpose of collective bargaining or other  
18 mutual aid or protection through that  
19 labor organization; or

20 “(B) to withhold or deny any other em-  
21 ployment right or privilege to an employee, who  
22 meets the criteria of clauses (i) and (ii) of sub-  
23 paragraph (A) and who is working for or has  
24 unconditionally offered to return to work for  
25 the employer, out of a preference for any other

1 individual that is based on the fact that the in-  
2 dividual is performing, has performed, or has  
3 indicated a willingness to perform bargaining  
4 unit work for the employer during the labor dis-  
5 pute.”; and

6 (2) by adding at the end thereof the following  
7 new subsection:

8 “(h)(1) An employer may not hire a permanent re-  
9 placement for an employee described in subsection (a)(6)  
10 unless the employer complies with the requirements under  
11 paragraph (2).

12 “(2)(A) An employer may hire a permanent replace-  
13 ment for an employee described in subsection (a)(6)(A)  
14 during the period beginning 61 days after the date of the  
15 commencement of a dispute described in subsection (a)(6)  
16 and ending 90 days after the date of such commencement.  
17 The total number of replacements made under this sub-  
18 section during such period shall not exceed 10 percent of  
19 the total number of employees who were in the bargaining  
20 unit described in subsection (a)(6)(A)(i) on the date of  
21 the commencement of the dispute.

22 “(B) An employer may hire a permanent replacement  
23 for an employee described in subsection (a)(6)(A) during  
24 the period beginning 91 days after the date of the com-  
25 mencement of a dispute described in subsection (a)(6) and

1 ending 120 days after the date of such commencement.  
2 The total number of replacements made under this sub-  
3 section during such period shall not exceed 20 percent of  
4 the total number of employees who were in the bargaining  
5 unit described in subsection (a)(6)(A)(i) on the date of  
6 the commencement of the dispute.

7       “(C) An employer may hire a permanent replacement  
8 for an employee described in subsection (a)(6)(A) during  
9 the period beginning 121 days after the date of the com-  
10 mencement of a dispute described in subsection (a)(6) and  
11 ending 150 days after the date of such commencement.  
12 The total number of replacements made under this sub-  
13 section during such period shall not exceed 30 percent of  
14 the total number of employees who were in the bargaining  
15 unit described in subsection (a)(6)(A)(i) on the date of  
16 the commencement of the dispute.

17       “(D) An employer may hire a permanent replacement  
18 for an employee described in subsection (a)(6)(A) during  
19 the period beginning 151 days after the date of the com-  
20 mencement of a dispute described in subsection (a)(6) and  
21 ending 180 days after the date of such commencement.  
22 The total number of replacements made under this sub-  
23 section during such period shall not exceed 40 percent of  
24 the total number of employees who were in the bargaining

1 unit described in subsection (a)(6)(A)(i) on the date of  
2 the commencement of the dispute.

3 “(E) An employer may hire a permanent replacement  
4 for an employee described in subsection (a)(6)(A) during  
5 the period beginning 181 days after the date of the com-  
6 mencement of a dispute described in subsection (a)(6) and  
7 ending 270 days after the date of such commencement.  
8 The total number of replacements made under this sub-  
9 section during such period shall not exceed 50 percent of  
10 the total number of employees who were in the bargaining  
11 unit described in subsection (a)(6)(A)(i) on the date of  
12 the commencement of the dispute.

13 “(F) An employer may hire a permanent replacement  
14 for an employee described in subsection (a)(6)(A) during  
15 the period beginning 271 days after the date of the com-  
16 mencement of a dispute described in subsection (a)(6) and  
17 ending 360 days after the date of such commencement.  
18 The total number of replacements made under this sub-  
19 section during such period shall not exceed 75 percent of  
20 the total number of employees who were in the bargaining  
21 unit described in subsection (a)(6)(A)(i) on the date of  
22 the commencement of the dispute.

23 “(G) An employer may hire a permanent replacement  
24 for an employee described in subsection (a)(6)(A) effective

1 361 days after the date of the commencement of a dispute  
2 described in subsection (a)(6).”.

3 **SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT**  
4 **THE CONCLUSION OF RAILWAY LABOR DIS-**  
5 **PUTES.**

6 Paragraph Fourth of section 2 of the Railway Labor  
7 Act (45 U.S.C. 152) is amended—

8 (1) by inserting “(a)” after “Fourth.”;

9 (2) by adding at the end thereof the following  
10 new subsections:

11 “(b) Subject to subsection (c), no carrier, or officer  
12 or agent of the carrier, shall promise, threaten or take  
13 other action—

14 “(1) to hire a permanent replacement for an  
15 employee who—

16 “(A) at the commencement of a dispute  
17 was an employee of the carrier in a craft or  
18 class in which a labor organization was the des-  
19 ignated or authorized representative or, on the  
20 basis of written authorizations by a majority of  
21 the craft or class, was seeking to be so des-  
22 ignated or authorized; and

23 “(B) in connection with that dispute has  
24 exercised the right to join, to organize, to assist

1 in organizing, or to bargain collectively through  
2 that labor organization; or

3 “(2) to withhold or deny any other employment  
4 right or privilege to an employee, who meets the cri-  
5 teria of subparagraphs (A) and (B) of paragraph (1)  
6 and who is working for or has unconditionally of-  
7 fered to return to work for the carrier, out of a pref-  
8 erence for any other individual that is based on the  
9 fact that the individual is employed, was employed,  
10 or indicated a willingness to be employed during the  
11 dispute.

12 “(c)(1) A carrier, or an officer or agent of the carrier,  
13 may not hire a permanent replacement for an employee  
14 under subsection (b) unless the carrier or officer or agent  
15 complies with the requirements under paragraph (2).

16 “(2)(A) A carrier, or an officer or agent of the car-  
17 rier, may hire a permanent replacement for an employee  
18 described in subsection (b) during the period beginning 61  
19 days after the date of the commencement of a dispute de-  
20 scribed in subsection (b) and ending 90 days after the date  
21 of such commencement. The total number of replacements  
22 made under this subsection during such period shall not  
23 exceed 10 percent of the total number of employees who  
24 were in the craft or class described in subsection (b).

1       “(B) A carrier, or an officer or agent of the carrier,  
2 may hire a permanent replacement for an employee de-  
3 scribed in subsection (b) during the period beginning 91  
4 days after the date of the commencement of a dispute de-  
5 scribed in subsection (b) and ending 120 days after the  
6 date of such commencement. The total number of replace-  
7 ments made under this subsection during such period shall  
8 not exceed 20 percent of the total number of employees  
9 who were in the craft or class described in subsection (b).

10       “(C) A carrier, or an officer or agent of the carrier,  
11 may hire a permanent replacement for an employee de-  
12 scribed in subsection (b) during the period beginning 121  
13 days after the date of the commencement of a dispute de-  
14 scribed in subsection (b) and ending 150 days after the  
15 date of such commencement. The total number of replace-  
16 ments made under this subsection during such period shall  
17 not exceed 30 percent of the total number of employees  
18 who were in the craft or class described in subsection (b).

19       “(D) A carrier, or an officer or agent of the carrier,  
20 may hire a permanent replacement for an employee de-  
21 scribed in subsection (b) during the period beginning 151  
22 days after the date of the commencement of a dispute de-  
23 scribed in subsection (b) and ending 180 days after the  
24 date of such commencement. The total number of replace-  
25 ments made under this subsection during such period shall



1 not exceed 40 percent of the total number of employees  
2 who were in the craft or class described in subsection (b).

3 “(E) A carrier, or an officer or agent of the carrier,  
4 may hire a permanent replacement for an employee de-  
5 scribed in subsection (b) during the period beginning 181  
6 days after the date of the commencement of a dispute de-  
7 scribed in subsection (b) and ending 270 days after the  
8 date of such commencement. The total number of replace-  
9 ments made under this subsection during such period shall  
10 not exceed 50 percent of the total number of employees  
11 who were in the craft or class described in subsection (b).

12 “(F) A carrier, or an officer or agent of the carrier,  
13 may hire a permanent replacement for an employee de-  
14 scribed in subsection (b) during the period beginning 271  
15 days after the date of the commencement of a dispute de-  
16 scribed in subsection (b) and ending 360 days after the  
17 date of such commencement. The total number of replace-  
18 ments made under this subsection during such period shall  
19 not exceed 75 percent of the total number of employees  
20 who were in the craft or class described in subsection (b).

21 “(G) A carrier, or an officer or agent of the carrier,  
22 may hire a permanent replacement for an employee de-  
23 scribed in subsection (b) effective 361 days after the date

1 of commencement of a dispute described in subsection  
2 (b).”.

